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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,992	08/04/2003	Charles R. Kirk	RPS920030035US1/2813P	5018
47052	7550	03/20/2009		
IBM RP-RPS SAWYER LAW GROUP LLP 2465 E. Bayshore Road, Suite No. 406 PALO ALTO, CA 94303			EXAMINER WINTER, JOHN M	
			ART UNIT 3685	PAPER NUMBER
			NOTIFICATION DATE 03/20/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@sawyerlawgroup.com

### Office Action Summary

**Application No.**

10/633,992

**Applicant(s)**

KIRK, CHARLES R.

**Examiner**

JOHN M. WINTER

**Art Unit**

3685

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

## **DETAILED ACTION**

### ***Acknowledgements***

1. The Applicants amendment filed on October 7, 2008 is hereby acknowledged, Claims 1-6,8 and 9 remain pending.

### ***Response to Arguments***

2. The amended claims are rejected in view of newly discovered reference Chasko (US Patent 6,738,749).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6,8-9 are rejected under 35 U.S.C. 103(a) as being obvious over Mori et al (US Patent 7,107,454) in view of Chasko (US Patent 6,738,749).
4. As per claim 1,  
Mori discloses a method for automatically verifying a signature during a retail payment transaction, the method comprising:  
obtaining an electronic signature of a cardholder;  
using an electronic signature verification process to automatically verify the electronic signature;(Abstract)

Mori. does not explicitly disclose wherein requiring a point-of-sale (POS) operator to manually verify the electronic signature when an exception occurs during the electronic signature verification process comprises adding the electronic signature to a signature database, thereby automatically building the signature database responsive to the POS operator verifying the electronic signature; wherein signatures are incorporated in the database after the automatic electronic signature verification process;

; Chasko discloses wherein requiring a point-of-sale (POS) operator to manually verify the electronic signature when an exception occurs during the electronic signature verification process comprises adding the electronic signature to a signature database, thereby automatically building the signature database responsive to the POS operator verifying the electronic signature; wherein signatures are incorporated in the database after the automatic electronic signature verification process; (Figure 9, Column 10, lines 37-60 – Examiner notes that although Chasko’s process does not occur “manually” it obvious that any automated process could alternatively be performed “by hand” )

5. . It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the Mori method with the Chasko’s . method in order to create a profile of a consumers spending habits linked to a specific payment account.
6. Examiner notes that the feature of “wherein signatures are added to the database to allow for variations thereof and to reduce the rate at which transactions are incorrectly denied by the automatic electronic signature verification process” is representative of non-functional descriptive information and it has been held such information will not distinguish a claimed device from the prior art (*In re Gulack*, 217 USPQ 401 (Fed. Cir.

1983), *In re Ngai*, 70 USPQ2d (Fed. Cir. 2004), *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01).

7. As per claim 2,

Mori discloses the method of claim 1, wherein using an electronic signature verification process to automatically verify the electronic signature further comprises:  
responsive to an account of the cardholder having a corresponding digital signature on file, comparing the electronic signature to a the corresponding digital signature stored in the signature database under an the account of the cardholder using a signature verification algorithm(Figure 5, 16)

8. As per claim 3,

Mori discloses the method of claim 1, wherein using an electronic signature verification process to automatically verify the electronic signature comprises:  
searching the a signature database by account number to determine if an account of the cardholder has a corresponding digital signature on file. (Figure 5)

Claims 4-6,8-9 are not patentably distinct from claims 1-3 and are rejected for at least the same reasons.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN M. WINTER whose telephone number is (571)272-6713. The examiner can normally be reached on M-F 8:30-6, 1st Fridays off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin Hewitt can be reached on (571) 272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMW

/Calvin L Hewitt II/  
Supervisory Patent Examiner, Art Unit 3685